Supreme Court, U.S.
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No. 87-472

In the Supreme Court of the United States

October Term, 1987

LEON D. RICHARDSON and MARGIE J. RICHARDSON, husband and wife, and COPTHORNE N.V., a Netherland Antilles corporation,

Petitioners,

vs.

HOWARD T. LANE, WILLIS SINSABAUGH, WATERFRONT PROPERTIES, INC., a Hawaii corporation, and The Fidelity Standard Life Insurance Company,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

GARY VICTOR DUBIN
Counsel for Petitioners
Suite 1915
733 Bishop Street
Honolulu, Hawaii 96813
(808) 537-2300

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This Petition is filed pursuant to Supreme Court Rule 51 in order to prevent serious injustice to Petitioners and to preserve the integrity of the review processes of this Court, on the grounds that intervening circumstances of a substantial and controlling effect require such reconsideration by this Court.

POINT I

REHEARING OF PETITIONERS' APPLICATION FOR WRIT OF CERTIORARI IS JUSTIFIED AS A RESULT OF DELIBERATELY FALSE AND PREJUDICIAL MISREPRESENTATIONS TO THIS COURT CONTAINED IN RESPONDENTS' JOINT BRIEF WHICH PETITIONERS HAVE HAD INSUFFICIENT TIME TO CORRECT IN THE RECORD OF THIS PROCEEDING.

The original Petition for Writ of Certiorari was filed and docketed in this Court on August 17, 1987, precisely on the ninetieth day following entry of the judgment below[1], and upon enlargement of time Respondents' Joint Brief was filed by mail from Nebraska on October 20, 1987, copies not reaching Petitioners' attorney in Honolulu until October 26, 1987.

Petitioners' attorney is a sole practitioner involved in trial matters at the time of receipt of Respondents' Joint

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1. The Clerk of the Court initially refused to accept the original Petition as out-of-time, but withdrew his objection on September 17, 1987, following further explanation from Petitioners as to Hawaii law and practice as set forth in the correspondence reprinted in Appendix C hereto.

Brief, and was in the process of having Petitioners' Reply Brief printed when word was received that the Court had denied the Petition for Writ of Certiorari on November 16, 1987, within but three weeks of receipt of the opposition brief.

While Petitioners fully understand that Supreme Court Rule 22.5 provides that this Court's decision will not be delayed pending receipt of reply briefs, Respondents' Joint Brief presented to this Court *two material misrepresentations* of such gross magnitude as to make it fundamentally unfair that Petitioners' important constitutional issues should be decided upon a contrived opposition record when Petitioners were effectively denied any meaningful opportunity to respond.

These Petitioners have no way of knowing to what extent such false reporting to this Court influenced its lightning-speed consideration of the original Petition, and therefore have no recourse but to pray that they may be heard upon rehearing by this Court.[2]

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2. Petitioners' counsel has filed, attached hereto, his Certificate of Good Faith, as required by Supreme Court Rule 51.2. While Petitioners would have preferred to have assisted this Court more fully by having had sufficient time to refute all of the many inaccurate statements of law and fact found in Respondents' Joint Brief, this Petition is necessarily limited to their gross misrepresentations that may have caused the denial as intervening circumstances thought controlling in effect.

POINT II

THE TRIAL JUDGE PRECLUDED VIRTUALLY ALL OF PETITIONERS' EXPERT WITNESSES AND EXPERT REPORTS, WHICH WAS IN EFFECT A DISMISSAL OF THEIR CASE BELOW, BEFORE TRIAL, AND WITHOUT ANY EVIDENTIARY HEARING AND EVEN ANY FINDINGS OF FACT, NOTWITHSTANDING RESPONDENTS' DELIBERATELY FALSE AND PREJUDICIAL MISREPRESENTATION TO THIS COURT THAT PETITIONERS HAD TWELVE OTHER EXPERTS WHO COULD HAVE TESTIFIED IN PLACE OF THOSE PRECLUDED.

The central core of Petitioners' constitutional case is that they were *precluded* from using their experts to prove liability and damages at their jury trial *before* it commenced, which was tantamount to a *dismissal* on January 17, 1985, and that that was the reason that they could not proceed to trial on January 21, 1985; moreover, this abrupt decision was made by a temporary judge[3] unfamiliar with the case who had never before presided over a jury trial.

Respondents' response to this factual recital by Petitioners was that, according to Petitioners' "Pretrial Statement" they had twelve more experts who could have testified in support of their case.[4] Were this of course

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3. The constitutionally frightening process whereby a chief justice can appoint colleagues at random to sit as circuit court judges and then preside over appeals that test their competency and his wisdom at selection in a state having a small judiciary should speak for itself.

4. See Respondents' Joint Brief in Opposition, at 13, and their Appendix B-3. The importance of expert witnesses in a building defects action should also speak for itself.

true, which it is not, Petitioners' *inability* to go to trial on January 21, 1985, would then easily be viewed as a dismissal on that date (and not January 17th) caused by them.

Respondents' argument that Petitioners had twelve other experts able to support their case is false, and Respondents know it to be false, intentionally attempting to mislead this Court.

The practice of preparing such Pretrial Statements in Hawaii practice is to recite all *possible* witnesses who might be called, not to create a roll for calling experts at trial.

When Respondents took the sworn deposition of precluded expert Lipman[5] they were told that the other experts were just briefly contacted for second opinions and had neither the knowledge of the construction defects or had put in sufficient time to have qualified as trial experts. This is fully explained in the transcript of Lipman set out in part as Appendix A to this Petition.

Indeed, the record below already underscores that Petitioners had no other experts capable of replacing those precluded, as the following comparison chart in the record[6] shows:

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5. It is more than significant to note that the abrupt preclusion order was procured on the representation without hearing that the Respondents were unable to have sufficient time to have taken Lipman's deposition before trial, ignoring 762 pages of transcript.

6. Record below, Volume XV, pp. 87-117, at 6.

Name of Expert	Money Paid	Pages in Reports	Transcripts
(*precluded)			
Lipman*	$25,000	103 pages	762 pages
Hidano*	16,000	2 pages	69 pages
Dobrowolski*	7,000	18 pages	0 pages
Iida	382	3 pages	60 pages
Lacayo	300	3 pages	15 pages
Smith	280	3 pages	47 pages
Tamura	0	1 page	14 pages
Gray	603	2 pages	19 pages

Respondents go so far as to tell this Court that architect Lacayo could have substituted for Lipman, when, at Lacayo's oral deposition before trial Lacayo testified that he had not even seen the house for several years, asking "What am I here for?" That may be why Lacayo's deposition was taken by Respondents for two minutes who here tell this Court Petitioners could have used him.[7]

The suggestion that Petitioners walked out of trial is ludicrous as the record recites that just before trial (and before Judge Sasaki) Petitioners had been offered a settlement amount of $650,000 over and above keeping a multi-million-dollar residence which offer Petitioners refused the day before the preclusion ruling was made.[8]

When Respondent's attorney Gibson used the argument that the precluded experts were "the guts" of Petitioners' case, to get the preclusion order, he knew the importance of

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7. Appendix B to this Petition; see Respondents' Joint Brief, at 13.

8. Record, Volume XVI, 77-88; while settlement discussions are normally privileged, no objection was made to such information being entered into the record below by any party.

stopping Lipman, Hidano, and Dobrowolski from testifying. It is clearly dishonest advocacy to now argue before the United States Supreme Court that these precluded experts were not really needed by Petitioners.[9]

The dismissal of the action below therefore occurred on January 17, 1985, and the constitutional issues are ripe for adjudication, for, by January 21, 1985, when the case was formally dismissed, Petitioners had been denied their constitutional rights as explained within their original Petition. Respondents have unforgivingly deliberately misrepresented the record below in clear disrespect of the processes of this Court.[10]

POINT III

THE CLERK OF THE COURT WAS CORRECT IN ACCEPTING PETITIONERS' ORIGINAL PETITION FOR WRIT OF CERTIORARI AS TIMELY SUBMITTED AS OF AUGUST 17, 1987, NOTWITHSTANDING RESPONDENTS' MISREADING OF THE ENTRY-OF-JUDGMENT PROVISIONS OF HAWAII LAW.

The judgment below was entered on May 19, 1987, following its rehearing; although review by the Hawaii

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9. The rest of Respondents' arguments as to preclusion are equally flawed; for example, they recite that the ICA refused review, as the record of the importance of the precluded experts was not shown; that argument fails to distinguish between exclusion and preclusion, and the ICA was more interested in what the rest of the evidence available might have shown, a different topic.

10. Such misstatements started with the temporary trial judge and have not stopped since; when the system permits a dismissal without any evidentiary hearing, such dishonest advocacy is encouraged.

Supreme Court was denied Petitioners on May 5, 1987, the time for such review by other parties to the appeal did not expire until May 18, 1987, hence the May 19, 1987, entry date.

Exactly ninety days thereafter Petitioners' application for writ of certiorari was filed with the Clerk of this Court, on August 17, 1987.

Although at first questioned, following the correspondence with the Clerk's Office set forth in its entirety in Appendix C hereto, the original Petition was accepted and docketed as of August 17, 1987.

The Clerk of the Court made the proper decision.

Section 2101(c) prescribes such filing ninety days *after the entry of judgment* within which to make application, and Respondents concede in their Joint Brief that the question of when such entry occurs is a matter of state law[11], for, although this Court must regulate its own jurisdiction, the statute is silent as to what constitutes entry of judgment, which varies by jurisdiction.

There is *no* ambiguity in Hawaii law. Both the Hawaii Legislature and the Hawaii Supreme Court have ruled that in our State the "entry of judgment" is *and only is* "the filing of the judgment" by the clerk of the court, even though that procedure differs with the federal approach and most of the other states.

This very question was confronted in 1961 in *Marn v. Reynolds*, 44 Haw. 655, 657-658.

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11. Respondents' Joint Brief, at 18-20.

In *Marn,* surprisingly ignored by Respondents, the appellant tried to argue, as Respondents have, for an earlier running of the entry-of-judgment period. The Hawaii Supreme Court rejected the argument, definitively ruling that in Hawaii there is *no effective judgment* until such time as one is *filed* and that is the only point at which the time for appeal runs:

> Such contention . . . is without merit, for Rule 58 of the Hawaii Rules of Civil Procedure, unlike the Federal Rules in this respect, provides *in haec verba:* "The filing of the judgment in the office of the clerk constitutes the entry of judgment; * * * ." The language is crystal-clear. . . . Pointing, nevertheless, to the existing variance between the Hawaii Rules and the Federal Rules as to what constitutes "entry of judgment," counsel insists that this court "act now to amend Rule 58 by judicial decision." Suffice it to say that we will not ignore the clear language of Rule 58. . . . This Court recognizes that the Hawaii Rules of Civil Procedure were patterned after the Federal Rules. Certain changes, however, were advisedly made to harmonize with local practice of long standing. One of them was to define "entry of judgment" in the language above quoted.

There is nothing in *McCarthy v. Jaress*, 711 P.2d 1315 (1985), cited by Respondents as their only state authority, contrary to the *Marn* decision of the Hawaii Supreme Court. In *McCarthy,* the ICA in fact held that Hawaii law does differ from that in the federal system with respect to entry-of-judgment, and that the starting point for the appeal period is the actual filing of the judgment, exactly as Petitioners have alleged and the Clerk's office has accepted in this proceeding.

This is not a surprising result when one understands that in Hawaii the ICA is not separate from, but a structural part of, the Hawaii Supreme Court, as explained in the materials presented to the Clerk of this Court set forth in Appendix C, particularly pages C-23 through C-26 and the official state judiciary chart reprinted on page C-18. Hence, the application for review in the Hawaii Supreme Court from any ICA decision is treated as a request, in effect, for a rehearing by the Hawaii Supreme Court, a one-layer appellate process.

The first and only judgment entered on appeal in this proceeding below occurred on May 19, 1987, exactly ninety days from before the submission of the original Petition, by the express words of Hawaii Rule 36 governing our appellate procedure:

> The filing of the judgment below constitutes entry of judgment.

Even in the federal system the authorities agree that in our situation, following a rehearing in the ICA and its amended judgment filed May 19, 1987, that would also be the starting point for starting the Section 2101(c) clock anyway, as further explained in the correspondence with the Clerk's Office in Appendix C; *Scofield v. N. L. R. B.*, 394 U.S. 423 (1969) (identical procedural rules as to entry of judgment and notice of entry as found in Hawaii); *Marquette National Bank of Minnesota v. First of Omaha Service Corp.*, 439 U.S. 299 (1978) (where re-

hearing, as here, the ninety days runs from the date of subsequent entry of judgment and not when the rehearing was denied).[12]

Moreover, even the Supreme Court Rules are not free from ambiguity on this point, for Rule 20.4 states that where there was a rehearing, as here (by the ICA which granted relief to the Petitioners in part), the time for filing the petition runs from the date of the entry of a subsequent judgment entered on the rehearing, and no such subsequent judgment was ever filed by the ICA until May 19, 1987.[13]

Finally, any doubt as to the timeliness of the original Petition was surely removed when by order of the ICA below, dated June 16, 1987 (sixty-two days before the submission on August 17, 1987, to this Court of the original Petition), the decision challenged below was further changed as set forth in Appendix C and properly brought also to the attention of the Clerk of the Court, but not a part of the original Petition since it was prepared and accepted for filing as of August 17, 1987, prior to this issue having arisen.[14]

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12. This Court has even on occasion considered petitions out-of-time; see *Deal v. Cincinnati Board of Education,* 402 U.S. 962 (1971).

13. No judgment could be filed under Hawaii appellate practice until ten days after review time ran for *all* parties to the appeal.

14. See Appendix C-13 and C-14.

CONCLUSION

These Petitioners have lost millions of dollars even though there has never been a *single* minute of evidentiary hearing in this matter and not even *any* findings of fact made prior to the dismissal of their action through preclusion of their expert testimony by the trial judge *before* trial.[15]

On appeal, the state courts have refused to examine the constitutional issues presented on the theory that Petitioners, in their seventies, were required to go through a mock trial without their evidence in order to prove that they could not otherwise win, in order to preserve constitutional guarantees.

On petition to this Court, their application has been denied in record time, without adequate opportunity for their counsel to even respond to the misrepresentations contained in the Joint Brief of Respondents.

For far lesser transgressions against justice, history recalls that even equally "enlightened" societies such as ours have lost faith in their judicial processes and have run with their muskets to the barricades.

Only this Court can remedy this injustice now.

We humbly ask this Court to grant these Petitioners consideration and the protections afforded by the United States Constitution to which they are entitled, so that

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15. Respondents' Joint Brief and the ICA Opinion speak merely of a "discovery battle"; not even has there ever been a finding of *any* discovery abuse committed by Petitioners of *any* sort.

they may, however belatedly, have their day in court on the merits of their case.

For the reasons given in this Petition, Petitioners pray that this Petition for Rehearing be granted.

Respectfully submitted,

GARY VICTOR DUBIN
Counsel for Petitioners

Honolulu, Hawaii
December 11, 1987

CERTIFICATE OF GOOD FAITH

I am a member of the Bar of the United States Supreme Court, and I represent the Petitioners in this proceeding.

I hereby certify that this Petition for Rehearing is made and presented to the Court in absolute good faith and in a genuine belief that it is meritorious and complies fully with the requirements of Supreme Court Rule 51, and that it is not submitted for any purposes of delay and is restricted to the required and appropriate grounds for rehearing.

Respectfully submitted,

GARY VICTOR DUBIN
Counsel for Petitioners

Honolulu, Hawaii
December 11, 1987

APPENDIX A

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEON D. RICHARDSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
HOWARD T. LANE, et al.,	)	
	)	
Defendants,	)	CIVIL
	)	NO. 70332
and	)	
	)	
THE FIDELITY STANDARD LIFE INSURANCE COMPANY,	)	
	)	
Intervenor/ Defendant.	)	
	/	

DEPOSITION OF JACK C. LIPMAN

taken at the Offices of Case, Kay and Lynch, 737 Bishop Street, Honolulu, Hawaii, on Monday, November 26, 1984, at 10:A.M., pursuant to Notice.

APPEARANCES:

FOR THE PLAINTIFFS: GARY VICTOR DUBIN

FOR THE DEFENDANT: MICHAEL GIBSON for Howard T. Lane

WESLEY W. ICHIDA
CATHY LEE for defendants Willis Sinsabaugh and Waterfront Properties, Inc.

REPORTED BY:
HAROLD NAKATA, CSR 169
Official Court Reporter
First Circuit Court
State of Hawaii

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* * *

Q Now with respect to to 10 Poipu Place, you have been retained by the plaintiffs to render certain opinions in that case, is that correct?

A That's correct.

Q Have you also been retained to assist in the retention of other experts to give opinions concerning the allegations in the and the complaint in this matter?

A Yes.

Q Can you tell us what you have done in that respect?

A I engaged through my direction only, the assistance of three separate civil engineers to make their own individual investigations and reports of the grading and drainage situation. And—

Q Could you tell us who those three others the three engineers were?

A Russell Smith, the Russel Smith Corporation. Edward Iida of Belt Collins civil engineer, and Brian Gray, civil engineer.

Q And they were all retained to do exactly the

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same thing, is that correct?

A Yes. Not together and relatively unbeknownst to one another at that time.

Q Other than those three engineers were you responsible for retaining the assistance of any other consultants?

A Well, yes. At the present time I have an estimator, construction estimator that I retain.

Q Who would that be?

A Jack Mathews, M-a-t-h-e-w-s.

Q Will he be, so far as you know, testifying in this case?

A I don't know.

Q Has he provided information to you with respect to—

A Not yet.

Q But you do expect to receive information from him?

A Correct.

Q Other than Mr. Mathews and the engineers, who else if anyone had you retained? For instance, I know you have retained someone to do with a scale model for you, I believe?

A Yes. The name of that firm is ASM Architectural Scale Model in—

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Mr. Dubin: I place an objection on the record. You started with, you used the words, retained by Mr. Lipman. Plaintiffs are retaining all consultants

Mr. Gibson: I stand corrected. That is correct. You are not paying for them. You are simply assisting in accumulating these various experts, is that correct?

A That's correct and directing their services.

Q Who else if any are you directing?

A This is not a consultant. This is a contractor whom I called to open up certain areas of the house inside and outside for further inspection and close them up sufficiently enough so inclement weather won't cause additional leaking.

Q Who is that?

A Hidano, H-i-d-a-n-o, Construction, Inc.

Q Have they completed their work?

A Yes, they have.

Q Is there anyone else that we haven't covered at this point?

(Mr. Dubin confers with the deponent.)

A Yes, there was one other I did forget, ESH, Engineers, Surveyors and engineers. They were formally known as William Hee and Associates. And I had them make a survey of the existing grading, elevation conditions at the

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front of the house as well as the periphery of the house.

Q Have their work been completed?

A Yes.

Q Of the consultants who you just referred to, whose work has not yet been completed?

A ASM the model. The had estimator Jack Mathews. And I think that's all.

Q As you know or may not know, Mr. Norman Lakaya (phonetic) also an architect has provided information in the form of deposition testimony and letters and he may have provided anything else other than those two matters. Have you seen any documents prepared by Mr. Lakaya with respect to this case?

A Yes, I have but I have no idea whether I have seen all the documents or not.

Q Can you describe, well, strike that. Have you had any discussions with Mr. Lakaya concerning this case?

A I had one telephone conversation with him.

Q Could you please tell me about that conversation?

A When I found that he was involved with Mr. Richardson prior to my being retained, I was curious to know to what extent that he was giving services, how far he had gone and so that we could either work together if that were going to be the case or I would know how to pickup

whatever it is he had reviewed thus far.

Q What did he describe to you as the work that he had performed?

A It was that he was hired to come up with conceptual designs or planning for certain remodeling that the

Richardsons wanted in their house done to their house. And which had never gone beyond except actual design.

Q Did you review those conceptual designs?

A Briefly, yes.

Q Did Mr. Lakaya reveal to you his having performed certain services with respect to review of the water infiltration problem allegedly existing at the premises?

Mr. Dubin: I would like to place on the record an objection based upon the hearsay rule.

A My answer to that question is, no.

Q You did not discuss with you his investigation of the water infiltration problem?

A No.

Q Have you seen a copy of his letter or report?

A I have not seen a copy of his report. I have seen a copy of a letter, I think, maybe two, I am not sure. That was some time ago.

Q Did you put any, strike that. Did you rely on in any way on that letter in coming to your opinion

concerning the allegations in this case?

A No.

Mr. Dubin: Excuse me for a second.

(Mr. Dubin confers with the deponent)

A I neglected to mention that I did, we did meet Lakaya at the site one time. But I don't recall what the

full conversation was. I think I don't even know who called him.

Q Do you remember what the purpose of that meeting was, sir?

A No. I know I was there for the purpose of further investigation. But I don't know why he was called out.

Mr. Dubin: For the record, Mike, I asked Lakaya to stop by. He stopped by for couple of minutes. I thought he should take a look at the house again.

Q Now, there is also an individual by the name of Dobrowolski and his report will be sent when it's available?

Mr. Dubin: D-o-b-r-o-w-o-l-s-k-i.

Q Mr. Dobrowolski also prepared a report. Did you have, was Mr. Dobrowolski's report prepared at your request?

A No.

Q Have you had occasion to review it in the

process of your consulting the plaintiffs in this matter?

A Yes.

Q Did you use it in coming up with your conclusion and recommendation?

Mr. Dubin: I object to vagueness of the question.

A No. Except to the extent that he and I met at the site when he was here and did certain inspections and took

certain photographs together. But we didn't discuss any remedial aspects.

Q You have seen his report, though, is that correct?

A That's correct.

Q But I believe it's your testimony that you relied on the people that you were responsible for hiring as consultants rather than Mr. Dobrowolski's report?

Mr. Dubin: I object to the vagueness of the phraseology of this question as to whether he relied and to what extent and what reliance means. I state that on the record to make sure the record is clear.

Q You can answer the question?

A Would you mind repeating it?

Q What, to what extent, if any, did you rely on Mr. Dobrowolski's report or will you rely on it in coming to your conclusion with respect to the problems which may

exist and the cost to repair those problems?

A None.

Q Can you tell me why?

A I just wanted to come up with my own opinion after my, after further investigation which at the time that he and I inspected the site we were not privileged at that time to look inside the walls or inside the ground area because no work had been done to expose the surfaces. Consequently, any decision or opinions that I made would only be put together after I had an opportunity to thoroughly inspect the project.

Q Would that apply though remedial work or to the causes for the problem as well?

A I would say for both.

Q So until you had hired the contractor whose name I forget now to open it up so you could look in, you couldn't in your opinion give an accurate assessment of the cost to repair or the causes for the problems, is that correct?

Mr. Dubin: I object on the record that you used the word accurately as misleading. Experts can give variety of opinions about, based upon information they have subject to changes and they get more information. You used the word accurate and suggestion of any other observation or advice or comments by an expert prior to opening up the

walls would not be accurate. Misstates the role of the expert.

Q I believe your answer was, yes, before Mr. Dubin made his objection. Is it still, yes, after he's made his objection?

A Yes.

Q (By Mr. Gibson) Off the record.

(Discussion off the record.)

(End discussion off the record.).

Q (By Mr. Gibson) Mr. Lipman, a report was prepared Dennis Shin of Sam Hirota, Inc. dated February 4, 1984. Did you rely on or consider this report in your assessment of the claims and remedial work, that you have prepared or will prepare?

A No.

Q Were there any other consultants upon who you have relied to make your final report or your report dated February, excuse me, December 10, 1982?

Mr. Dubin: Just a moment.

(Mr. Dubin confers with the deponent)

A. No, there were none others and I'd also like to clarify the fact that I did not rely on the reports given to me by the consultants that I hired.

Q What did you hire them for?

A To get their interpretation of the situation.

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Mr. Dubin: Once again, make clear on the record that they were hired by the plaintiffs.

Q I understand that the plaintiffs paid for their services but you suggested that they be retained to provide certain assistance to you, is that correct?

A Yes.

Q What kind of assistance were they to provide if it wasn't for purposes of your coming up with your recommendation or your evaluation?

A To see if there was any complete opposition to any of the foregone, not conclusion, but opinions that I had formed.

Q Can you explain that because I don't understand what you mean by that?

A If one of the consultants had come up with a conclusion that was totally in opposition to my thinking, I would have certainly gone into it with him and found out why he had gone and made that decision. What caused him to come up with that answer. Therefore, I would have in part relied on his report. But I am not relying on all these reports fully, otherwise, I feel that my role would have been just the conductor of the arts as opposed to giving professional expertise myself.

Q Did the three engineers provide you with different types of data or were they specifically requested

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by you to perform exactly the same task?

A They were requested to perform the same task.

Q Each one of them?

A Yes, individually.

Q And I believe now we have identified all of the consultants who you relied upon, is that correct?

A That's correct.

Mr. Dubin: Once again, the word relied upon still confuses me. That's what he's saying. Clarify that.

Q Who provided information upon which you based your opinion, whether it was to confirm your opinion or information such as Mr. Mathews which you used in coming to a conclusion?

A That's right.

Mr. Dubin: I would like talk to Jack a second.

(Mr. Dubin confers with the deponent)

A If I may, I would like to back up to this extent. That although I selected the engineers, the engineering consultants to provide this information, it was requested by Mr. Dubin that I get additional engineers to make, to see what their opinions would be relative to the grading situation and the eventual damages that may have been caused by drainage.

Q I don't want to put words in your mouth but is that the reason you had three instead of just one?

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A That's correct.

* * *

APPENDIX B

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEON D. RICHARDSON, et al., Plaintiffs, vs. HOWARD T. LANE, et al., Defendants, and THE FIDELITY STANDARD LIFE INSURANCE COMPANY, Intervenor/ Defendant.	CIVIL NO: 70332

DEPOSITION OF NORMAN LACAYO

Taken on Behalf of Defendant Howard T. Lane at 928 Nuuanu Avenue, Honolulu, Hawaii 96813, commencing at 2:10 p.m., on Friday, November 30, 1984, pursuant to Notice.

BEFORE:

D. IWALANI CARR, CSR 111
Notary Public, State of Hawaii

APPEARANCES:

For Plaintiffs: GARY VICTOR DUBIN, ESQ.
Suite 800
345 Queen Street
Honolulu, Hawaii 96813

For Defendant Howard T. Lane:	MICHAEL W. GIBSON, ESQ. Ashford & Wriston 235 Queen Street Honolulu, Hawaii 96813
For Defendants Willis Sinsabaugh and Waterfront Properties, Inc.:	CATHY A. LEE, ESQ. Case, Kay & Lynch 2500 & 2600 Grosvenor Center 737 Bishop Street Honolulu, Hawaii 96813

* * *

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EXAMINATION

BY MR. GIBSON:

Q. You gave two depositions in October of 1982. Since October of 1982, what, if anything, have you done with respect to investigation of the situation at 10 Poipu Place?

A. Nothing.

Q. Nothing at all?

A. (Witness shakes head from side to side.)

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Q. Have you had discussions with either Mr. Dubin or Mr. Jack Lipman or engineers or others?

A. Nothing that I can think of that was of any significance.

Q. Have you been to 10 Poipu Place?

A. I was there one day, one afternoon. There was nothing that would be an investigative or an inquiring.

Q. Do you recall what the purpose of that visit was?

A. Offhand, I really can't. Exactly, I can't, really, because it was like, "What am I here for?"

Mr. Dubin: Off the record.

(Off the record.)

BY MR. GIBSON:

Q. If you remember, who was there at the time that you were at 10 Poipu Place?

A. Jack Lipman and Gary.

Q. That would be Mr. Dubin. Gary Dubin.

A. Yeah.

Q. Did you provide Mr. Dubin or Mr. Lipman with any documents, either plans, specifications?

A. No.

Q. Nothing such as that?

A. No.

Page 13

Q. Did you have occasion to be able to walk around the house and observe the house?

A. No.

Q. So you couldn't tell us today whether it was in the same condition as it was when you were there in October of 1982 or improved or deteriorated?

A. I did no examination of any kind.

Mr. Gibson: Well, in that case, I have no further questions of Mr. Lacayo.

Mr. Dubin: Cathy?

Ms. Lee: I have no questions.

Mr. Dubin: Then for the record, Plaintiffs will state that we intend to provide Mr. Lacayo with the final report of Mr. Lipman and ask Mr. Lacayo to read that final report for purposes of reflecting on that report and his earlier observations when he was on the property a couple years ago. And the reason that Mr. Lacayo was named as an expert is because at the deposition that you took, Mr. Gibson, on two sessions in October, you asked him certain questions that put his opinion on record as an expert, and we wish to follow that line up at the trial, with Mr. Lacayo, if necessary.

Mr. Gibson: Okay.

APPENDIX C

GARY VICTOR DUBIN
Attorney at Law
Suite 1915
Grosvenor Center
733 Bishop Street
Honolulu, Hawaii, 96813

(808) 537-2300

September 17, 1987

Francis J. Lorson, Esq.
Chief Deputy Clerk
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

RE: Leon D. Richardson, et al. vs. Howard T. Lane, et al.; Petition For Writ of Certiorari, Submitted August 17, 1987

Dear Mr. Lorson:

In accordance with your telephone request today, I am resubmitting for filing under separate cover, by first class certified mail, 40 copies of the above Petition, together with 40 copies of the Appendix thereto, and my original office check in the amount of $200.00, which you had earlier returned to me by letter dated August 21, 1987, pursuant to the request that I subsequently made to your office, now granted, to reconsider your decision and permit its filing.

Thank you for your reconsideration of this matter and the opportunity to have docketed our application for a writ of certiorari in this most important case.

Very truly yours,
/s/ Gary Victor Dubin

GVD/o

cc: Clerk, Supreme Court of Hawaii
(Your No. 11353)

Clerk, Intermediate Court of Appeals
(Your No. 11353)

Michael W. Gibson, Esq.
Wesley Ichida, Esq.
Walter Beh II, Esq.

GARY VICTOR DUBIN
Attorney at Law
Suite 1915
Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813

(808) 537-2300

September 5, 1987

Express Mail

The Honorable Joseph F. Spaniol, Jr.
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

RE: Leon D. Richardson, et al. vs. Howard T. Lane, et al.; Petition For Writ of Certiiorari, Submitted August 17, 1987

Dear Mr. Spaniol:

Yesterday I received a copy of the enclosed letter from Chief Deputy Clerk Francis J. Lorson, informing me that your office had refused to accept for filing the above-referenced Petition.

I am apparently the last to know of this decision, since that letter was sent with the box containing the returned copies of the Petition, which took several weeks to reach Honolulu by surface mail.

I am writing to request that your office reconsider its decision and accept our Petition for filing, as I respectfully believe that you have made an error and that both under the Rules and the Statute your office is required to docket the Petition, for the reasons which follow.

Title 28, Section 2101(c), as you know, specifies a period of ninety days "after the entry of such judgment or decree". You will note that the judgment of the Hawaii Intermediate Court of Appeals was entered on May 19, 1987, by a document signed by Judge Heen entitled "Judgment on Appeal". The Petition was filed on the ninetieth day following that entry of judgment.

While I very much appreciate that the Court wishes to differentiate between the day of the "rendering" and the day of the "mandate" of judgment, I suppose so as to make uniform [Page Two] the actual time period considering the apparent differences among local practices in the various States, we believe that your office, even with this distinction in mind (which is moreover not statutory), has misapplied Rule 20.

First, the "Judgment on Appeal" entered on May 19, 1987, was *not* the Hawaii court's "mandate", as local procedure provides that the mandate issues in the form of the "Notice of Entry of Judgment". That is the Hawaii practice, and that document was entered by the Hawaii court also on May 19, 1987, as a *separate mandate*, specifically directed to the lower court.

This dual procedure is nothing new. As Stern and Gressman explained in the Fourth Edition of their *Supreme Court Practice:*

> And where under state law a final judgment is not issued or entered until 30 days after rendition of the decision, the time for petitioning for certiorari does not begin to run until that subsequent entry of judgment. Puget Sound P. &. L. Co. v. King County, 264 U.S. 22, 23, 25.

The reasoning for such a local practice in the context of a rehearing and a subsequent application for review in the Hawaii Supreme Court is clear in our facts. The initial opinion of the Hawaii Intermediate Court of Appeals was rendered on April 3, 1987. Local rules provide for entry of the judgment ten days thereafter unless reconsideration is requested or a writ of certiorari to the Hawaii Supreme Court is filed.

In our case, a motion for reconsideration was filed *and granted in part* on April 22, 1987, in favor of these Petitioners; while our application to the Hawaii Supreme Court was denied on May 8, 1987, by notification by mail the following week, another party had filed a motion for reconsideration of the amended order which was not denied until May 5, 1987; local rules provided time for application for a writ of certiorari to the Hawaii Supreme Court from such denial until May 18, 1987, notice having been given by mail which adds two days to the period under state law.

[Page Three] Thus, with all of this going on, as a matter of course, it is easy to understand why the Hawaii courts do not enter judgment until the applicable time periods have fully expired. This is a common practice even in the federal courts, for Rule 36 ("Entry of Judg-

ment") of the Federal Rules of Appellate Procedure for the United States Court of Appeals provides:

> The notation of a judgment in the docket constitutes entry of judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. . . . The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion is written, and notice of the date of entry of the judgment.

That is precisely why, on April 23, 1987, *after* the amended opinion here, counsel for appellee Lane wrote the Hawaii Intermediate Court of Appeals with his version of the judgment to be entered, for settlement:

> Pursuant to Rule 41, Hawaii Rules of Appellate Procedures, we are transmitting herewith another proposed Judgment on Appeal and Notice of Entry of Judgment on Appeal.

Judgment was therefore entered on May 19, 1987, the first possible day under local appellate rules. Rule 36 provides: *The filing of the judgment constitutes entry of judgment.* This issue is determined by *local* rules.

Your lack of understanding of the Hawaii practice may result from a misconception of the two-level appellate structure in our State; the Hawaii I.C.A. functions as a part of the Hawaii Supreme Court. In reality there are not two appellate structures, although review may be had in the Hawaii Supreme Court. The appeal is assigned by the Supreme Court to itself or the I.C.A.; there was

no entry of judgment possible or intended within the Hawaii appellate process until the Hawaii Supreme Court ruled. Its denial of certiorari then triggered the entry of judgment, not as Mr. Lorson's letter mistakenly otherwise assumed. There was no appellate judgment's finality "stayed" by Hawaii Supreme Court [Page Four] review; that review was built into the "assignment" process.

Second, even were your office's interpretation of the first Hawaii Intermediate Court of Appeals' opinion as the "entry of judgment" to be correct, which we dispute, your office in refusing our filing has nevertheless misapplied section 20.4 for that section states that in the event, as here, where a rehearing was granted:

> the time for filing the petition for writ of certiorari for all parties . . . runs from the date . . . of the entry of a subsequent judgment entered on the rehearing.

This section should be controlling; it does not refer to "rendering" but "entry of judgment" which clearly occurred in this case on May 19, 1987. This surely is the clearest of cases illustrating the necessity of counting from the date of actual entry, for the order of the Hawaii Intermediate Court of Appeals amending the first opinion directs the clerk to make the necessary changes in the opinion first.

There was no notice of entry of judgment and no entry of judgment until May 19, 1987. The application to the Hawaii Supreme Court under Hawaii practice comes *before* the entry of judgment in the I.C.A. and not *after* as Mr. Lorson mistakenly believed. Rules 31(e) and 41(b), Hawaii Rules of Appellate Procedure.

The distinction in these circumstances between the date the opinion is rendered and the date of the *entry* of judgment has already been decided by the United States Supreme Court in *Scofield v. N.L.R.B.*, 394 U.S. 423 (1969), in a case involving a federal entry-of-judgment rule identical in effect to that here:

> We are met at the outset with the contention that the petition for certiorari was untimely filed. In civil suits certiorari must be applied for "within ninety days after the entry of [the] judgment or decree" of which review is sought. 28 U.S.C. § 2102(c). In this case an opinion of March 5, 1968, concluded that "upon presentation, an appropriate decree will be entered." A decree was in fact entered on April 16, 1968. The petition for certiorari was docketed here on July 6, 1968, within 90 days of the decree but not of the opinion.

[Page Five] In *Scofield*, the procedural rules were identical to the language of the Hawaii Appellate Rules specifying entry of judgment and notice of entry after the decision:

> In our view, the petition for certiorari was timely filed. Petitioners here received a copy of the March 5 opinion, but were given no notice of any entry of judgment on that date, as would be required by Rule 36 of the new Federal Rules of Appellate Procedure, effective July 1, 1968. Since no notice was given and it could not have been clear to petitioners whether there was a March 5 judgment or not we hold, without abandoning the standard that a "judgment for our purposes is final when the issues are adjudged" and settled with finality, . . . that in this case the relevant date is that of the entry of the decree. Cf. Rubber Co. v. Goodyear, 6 Wall. 153 (1868).

In its most recent decision on this issue which I have found, the United States Supreme Court in *Marquette National Bank of Minnesota v. First of Omaha Service Corp.*, 439 U.S. 299 (1978), held that where, as here, there was a subsequent rehearing, the ninety days runs from the date of the subsequent entry of judgment and not when the rehearing was denied:

> n18. We reject respondent's argument that the petitions are untimely. The opinion of the Minnesota Supreme Court was filed on November 10, 1977. Petitioners filed a timely petition for rehearing, which, under Minnesota law, defers the entry of judgment until after the disposition of the petition. See Minn. Rules Civ. App. Proc. 136.02, 140. The petition for rehearing was denied on December 8, 1977; judgment was entered on December 14, 1977, by way of a separate document stating that "the order and judgment of the Court below, herein appealed from . . . be and the same hereby is in all things reversed." App. H to Pet. for Cert. in No. 77-1265. Petitions for certiorari were filed [Page Six] in this Court on March 13, 1978, within the 90 days "after the entry of such judgment or decree" allotted by 28 U.S.C. § 2101(c). See Puget Sound Power & Light Co. v. King County, 264 U.S. 22, 24-25 (1924); Commissioner v. Estate of Bedford, 325 U.S. 283, 284-288 (1945).

Our facts are even stronger than those in *Marquette*, supporting *timely* filing. Petitioners' motion here for reconsideration was granted and partial reversal was granted, necessitating the ordering of the clerk to amend the original decision. There was no simple denial. Under Hawaii appellate procedures, the entry of judgment was expressly delayed until the Hawaii Supreme Court acted on the application for a second review; when the Hawaii

Supreme Court denied these Petitioners further review there had as yet been *no* entry of the judgment and indeed at that time of denial other parties in the case still had a right to seek review in the Hawaii Supreme Court (until May *18,* 1987).

Once again, this is clearly understood when one understands that in Hawaii the Intermediate Court of Appeals is an appellate arm of the Hawaii Supreme Court; the appellate procedures are integrated. There is no entry of judgment, not even by the Intermediate Court of Appeals, until *after* the decision, in this case, to deny review by the Hawaii Supreme Court; at that point, it is not a matter of simply making final the judgment of the I.C.A. previously entered; there was no previous entry of judgment. While this might seem confusing, it is easily understood when it is understood that the procedures of the two courts and their clerks' offices are integrated, pursuant to a one-appeal-per-case theory, as the Hawaii legislative history makes clear, in HCCR No. 70, Session Laws 1979, at 1123:

> [T]he essence of its establishment is not the construction of an additional layer of appeal. Rather, its [I.C.A.'s] function is to alleviate appellate congestion by relieving the Supreme Court of its appellate load in the more routine and minor decisions in all types of cases.

[Page Seven] We have no quarrel with your obviously well-founded policies to screen out-of-time cases from the Court and also to apparently avoid permitting petitioners to have more than ninety days in which to file through delaying entry of judgment.

It makes no administrative or substantive sense, however, to screen out our case at this juncture. We have relied upon the plain language of the applicable congressional statute and the only precedent of this Court which we have found completely supports our reading. Nor has there been any delay in the entry of the judgment below through some unacceptable "mandate" procedure.

The issues presented in our Petition are, moreover, some of the most *fundamental* concerns embodied within the Fourteenth Amendment. Congress through Section 2101(c), presumably pursuant to its constitutional mandate to implement and enforce the Fourteenth Amendment, has provided for a discretionary appeal if taken within ninety days from "the entry of judgment". There is no ambiguity in that constitutional mandate unless one wants to read it into that clause.

Your Rules of the Supreme Court referring to actual "rendering" are, to the contrary, ambiguous at best, and even your Rules say "entry of judgment" and not "rendering" when, as here, there was a rehearing and a new decision.

On behalf of Petitioners, we respectfully request in the facts of this case that your office permit the filing of our Petition on time and leave any remaining doubts, surely, for a determination by the Court. Indeed, we strongly question any delegation of Supreme Court jurisdictional powers to administrative officers to make such determinations ex parte, without even a hearing, when the protection of Fourteenth Amendment constitutional rights and their vindication are sought, especially in close or arguable circumstances.

There is, at this level, however, no where else to go except to make an application, if necessary, for acceptance of jurisdiction to the Justices of the Court itself.

Hence, I would appreciate your reviewing the contents of this letter and informing me of your decision at the earliest possible opportunity.

[Page Eight] I therefore request an immediate hearing with members of your staff, and I will be prepared to come to Washington, D.C., at once for this purpose, any time after you receive this letter; I will need one day to rearrange my court calendar here and one additional day for flight time.

Further, I will prepare and present, if necessary, an application at that time to the Court for an order docketing the Petition, or, in the alternative, for an order granting an extension of time in which to file the Petition, if your office should not reconsider, and I would very much appreciate your suggestions concerning your preferred procedures for such application in the event that you have worked out such a process for such situations.

Since time is of the essence, I trust that I will hear from you with reasonable speed. While I understand that your Rules suggest, for instance, that applications for extensions of time to file should be made well in advance of the deadline for filing, I believe that in this case it is clear that given the ambiguities in your policies and rules and the plain language of the applicable statute and Hawaii rules, I should have the right to present my case to Justices of the Court, and would therefore also appreciate appropriate appointments with the supervising Jus-

tice for this Circuit and/or his law clerks at the time of my arrival if I am unable to persuade your office to accept the Petition for filing.

You will note that the applicable statute allows a 60-day extension (which would be to October 5th using your method of counting, which we believe is erroneous). Even as to this issue of "jurisdiction", Justices Black and Douglas, at least, had many times remarked that the Court has been inconsistent in its policies and has even on occasion considered Petitions "out-of-time"; see *Deal v. Cincinnati Board of Education*, 402 U.S. 962 (1971). Our Petition is only "out-of-time" if the ambiguities are read against us. We do not believe that that is a proper way to decide constitutional cases of the type we have presented and hope that the Court will share our views.

With all due respect, we believe that the Constitution of the United States and the Laws of the Congress give us the right to have that decision made by the Court and not by the Clerk's Office.

[Page Nine] I have enclosed one copy of the Petition and its Appendix, for your reference (since you sent them back to me) which contains the information referred to herein, and I would be pleased to provide your office with whatever additional documents you might request, with whatever authentication that is desired, although I would think that the complexity of this question at best would itself be grounds for your accepting the Petition for it is unthinkable that Rule 20.3 was designed to grant to your office the discretion to decide in anything but the clearest of customary cases lest you intend to establish a mini-Su-

preme Court in your department to ponder over these questions and issue opinions yourselves.

For example, in our case the decision of the Intermediate Court of Appeals was further changed, by order dated June 16, 1987, only eighty-one days ago (and just sixty-two days before our attempted filing), as follows:

> The court having considered Defendant-Appellee Howard T. Lane's motion for award of costs on appeal of $106.50 and for leave to apply to the circuit court for attorney's fees incurred on appeal filed on May 28, 1987, and Plaintiffs-Appellants' memorandum in opposition, IT IS HEREBY ORDERED that said motion is granted.

This amendment to the I.C.A. decision could cost my clients an additional $50,000 or more. It is no mere cost award, but grants attorneys' fees which are not awardable in appeals in Hawaii; they are awarded here based upon the appellate court's apparent interpretation of the underlying land sale contract, and that itself is a substantive matter first argued on appeal only *after* the first entry of judgment on May 19, 1987. What of its effect? This is precisely the type of factual situation that does not lend itself to administrative "ballparking" by your office.

Thus, with respect to the extraordinary "cost" award, the Hawaii Rules of Appellate Procedure, Rule 39(d), requires that the original entry of judgment be "amended" to provide for the additional relief. How will your office factor in this added State "entry-of-judgment" requirement?

Rule 39(d) reads:

> [Page Ten] The issuance of the judgment and the notice of entry of judgment shall not be delayed for an

> award of costs and fees. If the notice of entry of judgment has been issued before issuance of an order awarding costs and fees, the party favored by such an order shall prepare and submit to the clerk of the Supreme Court [of Hawaii] a proposed amended notice of entry of judgment which shall be processed in the same manner as are original notices under Rule 41, infra.

The amended judgment was delayed due to the contested and substantive nature of the issues and the arguments submitted to the I.C.A.

To my knowledge, no amended judgment was ever submitted to the Hawaii Supreme Court, nor has there as yet been any amended notice sent. The fact that the amended judgment and notice are to be submitted to the Supreme Court of Hawaii in draft form (and not to the Intermediate Court of Appeals) by Rule 39(d) covering both courts, even though the original decision and judgment entered may have been, as here, entered in the Intermediate Court, further shows the integrated nature of both courts with respect to the significance of the denial of certiorari by the Hawaii Supreme Court *before* any judgment had been entered.

I trust that the above amply demonstrates the less than perfect appellate world we live in and the lack of our mortal perfection. In applying "out-of-time" capital punishment remedies, your office under Rule 20.3 should surely discharge a greater burden for providing clearer language and perhaps some examples before decapitating civil parties in the absence of any showing of prejudice or intended or inexcusable neglect.

The decision to file a Petition in your Court has not grown any easier for litigants in recent years; they have not only had to weigh the statistical improbabilities of review, in terms of the sheer numbers of cases; but printing costs and your preparation requirements have made justice increasingly expensive.

These Petitioners have braved the journey to your front door and are more deserving of your extended consideration, [Page Eleven] in their defense of everyone's Fourteenth Amendment constitutional rights, in the most respected deliberative tribunal in the history of the world.

Forgive us if we have thus far experienced some honest disappointment.

The remedies we seek are outlined in chart form on the following page, in terms of whatever and whichever magical dates might apply.

Please keep in mind that the statute makes none of the special distinctions now applied by your office, nor do the Supreme Court's decided cases support any cavalier decision that our Petition was out-of-time; the statute does not even restrict extensions to those requested before-the-fact.

We therefore suggest that the outcome of this is truly within your discretion and ultimately with the Justices, and no one's hands are tied.

It has often and increasingly been said of the American appellate process that with its growing technicalities with respect to appeals it has become full of traps for the unwary and angles for the shrewd.

We sincerely pray that your office will reconsider its prior letter opinion so that justice may be done in this case.

Very truly yours,

/s/ Gary Dubin
Gary Victor Dubin

GVD/o
enclosures

cc: Clerk, Supreme Court of Hawaii
(Your No. 11353)

Clerk, Intermediate Court of Appeals
(Your No. 11353)

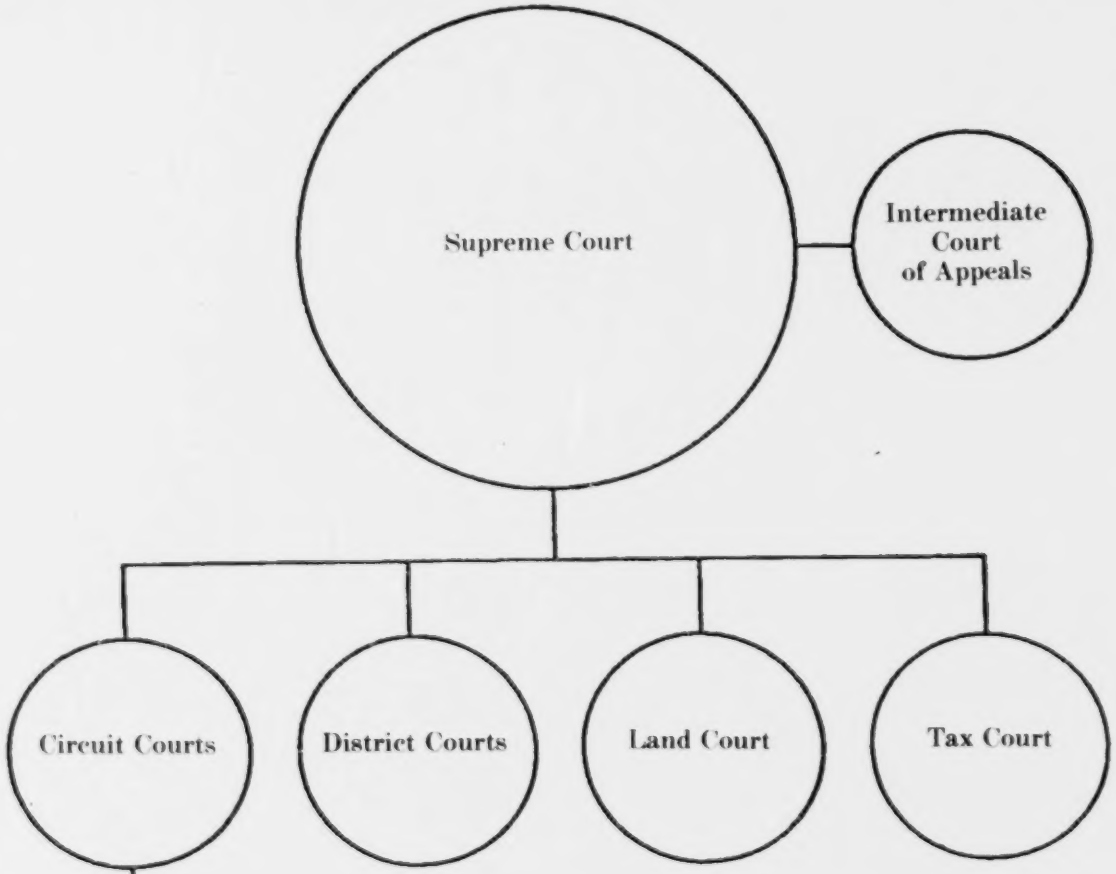
Michael W. Gibson, Esq.
Wesley Ichida, Esq.
Walter Beh II, Esq.

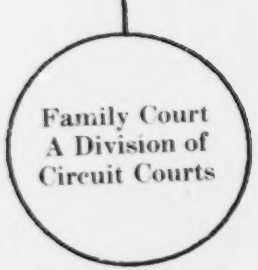
Francis J. Lorson
Chief Deputy Clerk
United States Supreme Court

ALTERNATIVE TIME PERIOD ANALYSES FOR FILING OF PETITION

FIRST STARTING DATE	CERT PERIOD EXPIRES	IS RULE 20 SATISFIED?
May 8, 1987 Date Hawaii Supreme Court denied review of I.C.A. decision; at that time no judgment had been entered as Hawaii Supreme Court & I.C.A. share comon appeal process and structure; goes back to I.C.A. for entry of judgment for first time.	August 17, 1987 Date judgment first entered by I.C.A. 5/19/87, after a denial of review by Hawaii Supreme Court; Hawaii App. Rule 36 requires filing of judgment as entry of judgment, not before and not opinion; amended judgment required actual entry.	YES S 2101(c) says only entry of judgment; Rule 20 says rendering but if reconsidered, Rule 20 specifies entry also; mandate separate under Hawaii law and was not issued also until 5/19; 90 days from judgment entry was 8/17/87 as filed.
SECOND STARTING DATE	**CERT PERIOD EXPIRES**	**IS RULE 20 SATISFIED?**
May 18, 1987 Date other parties' right to seek Hawaii Supreme Court review expired; local rules give right to party and clerk withholds entry of judgment until then as a matter of course; review by Hawaii Supreme Court is in effect a rehearing.	August 17, 1987 Date judgment first entered by I.C.A. 5/19/87, after a denial of review by Hawaii Supreme Court and other parties did not seek further review, plus 2 days after 5/15/87 (mail rule + Sat. rule); earliest date 8/17/87 since 8/16/87 a Sunday.	YES Hawaii App. Rule 36 governs when judgment entered under state law; time of filing of judgment 5/19/87. Clerk could have filed no earlier than 5/18/87, waiting ten days for last review right to expire; even then 8/17/87 would have been timely.
THIRD STARTING DATE	**CERT PERIOD EXPIRES**	**IS RULE 20 SATISFIED?**
May 19, 1987 Date of entry of judgment (filed under rule 36), not date of mandate only; clerk had proposed draft of judgment for ten days and waited until all further state review periods for all parties expired before filing judgment.	August 17, 1987 Date judgment first entered by I.C.A. 5/19/87, after a denial of review by Hawaii Supreme Court; even Rule 20.4 states that due to the amended decision the period does not run until the entry of judgment; all decided U.S. Sup. Ct. cases agree.	YES 5/19/87 was date of entry of judgment in addition to entry of mandate by separate document; Rule 36 of Hawaii Appellate Rules requires filing of judgment as entry. Petition filed 8/17/87 in time. all U.S. Sup. Ct. cases on this point agree.
FOURTH STARTING DATE	**CERT PERIOD EXPIRES**	**IS RULE 20 SATISFIED?**
June 16, 1987 I.C.A. decision further amended after entry of first judgment on 6/16/87, to include extensive costs and fees; Hawaii App. Rule 39(d) requires new amended judgment and entry and notice (not yet prepared or filed). Significantly changed result.	September 14, 1987 If 6/16/87 order considered new entry of judgment under "rendering" theory, then the 90 days would expire 9/14/87 and even later if Hawaii App. Rule 36 obeyed requiring an entry of judgment by filing. Motion to add to judgment was in effect rehearing.	YES If 6/16/87 order amending judgment started clock for Petition again, 8/17/87 filing in time; if considered necessary to recite new order, clerk's office should add this letter as supplement to original filing and accept for filing by 9/14/87.

Hawaii's Judicial Organizational Chart





Hawaii's judicial system is organized into two levels. The appellate level consists of the Supreme Court and the Intermediate Court of Appeals (ICA). The trial level consists of the Circuit Courts, the Family Courts (a division of the Circuit Courts), the District Courts, and two specialized courts: the Land Court, which deals primarily with registration of title for fee simple land and easements; the Tax Appeal Court, which handles disputes between the tax assessor and taxpayer. Direct lines of appeal extend to the Supreme Court from all trial level courts. An assignment judge, appointed by the Chief Justice from among those who sit on the Supreme Court and the ICA bench, decides whether the Supreme Court or the ICA will review an appeal.

The Circuit Courts are courts of general jurisdiction in civil and criminal matters. Circuit Courts have exclusive jurisdiction in criminal felony cases, probate and guardianship cases, and civil cases involving sums of more than $5,000. All jury trials are held in Circuit Courts. The Family Courts, established to deal exclusively with children and families, form a separate divison of the Circuit Courts.

The District Courts are non-jury trial courts with limited jurisdiction in civil and criminal matters. District Courts have exclusive jurisdiction in petty and criminal misdemeanors, traffic violations, and normally, civil cases involving sums of less than $1,000.

Circuit and District Courts share concurrent jurisdiction in civil matters where the contested amount is less than $5,000.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

August 21, 1987

Gary Victor Dubin, Esquire
Suite 1915
733 Bishop Street
Honolulu, HI 96813

Re: Leon D. Richardson and Margies J. Richardson and Copthorne, *N.V. v. Howard T. Lane, et al.*

Dear Mr. Dubin:

Your petition for writ of certiorari and appendix thereto mailed from Honolulu, on August 17, 1987 were delivered to this office on August 20, 1987, and are returned as out-of-time.

The time to file this petition for writ of certiorari began to run May 8, 1987, when the Supreme Court of Hawaii denied your application for writ of certiorari. Time does not run from the subsequent entry of mandate. See Rule 20 of the Rules of the Supreme Court.

Since time to file this petition began to run on May 8th the time to file this petition expired on August 6, 1987. See 28 U.S.C. § 2101(c). Once the time to file a petition in a civil matter has expired, the Clerk is directed by the Rules of the Supreme Court to refuse to file the petition. See Rule 20.3.

Also enclosed is your check in the amount of $200.00.

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk
By /s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

vjr
Enc.

cc: Clerk Supreme Court of Hawaii
(Your No. 11353)
Clerk, Intermediate Court of Appeals of Hawaii
(Your No. 22353)
Michael W. Gibson, Esq.
Wesley Ichida, Esq.
Walter Beh, II, Esq.

HAWAII RULES OF APPELLATE PROCEDURE

* * *

Rule 36. ENTRY OF JUDGMENT.
The filing of the judgment constitutes entry of judgment.

* * *

GARY VICTOR DUBIN
Attorney At Law
Suite 1915
Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813

(808) 537-2300

September 7, 1987

Express Mail

The Honorable Joseph F. Spaniol, Jr.
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

RE: Leon D. Richardson, et al. vs. Howard T. Lane, et al.; Petition For Writ of Certiorari, Submitted August 17, 1987

Dear Mr. Spaniol:

Further to my letter to you of September 5, 1987, requesting a reconsideration of your decision to refuse to file and docket the above-referenced Petition, I am writing to bring one relevant point into perhaps sharper focus than may have been evident in my prior, necessarily lengthy letter.

The rehearing in the Intermediate Court resulted in an amendment to the earlier opinion being granted to us on April 22, 1987; pursuant to local appellate rule 36, that was not an "entry of judgment" as that Hawaii rule specifically requires a filing of the judgment as constituting such entry.

The reasons for such a short delayed procedure are obvious, considering the fact that other parties still had up to May 18, 1987, under the local rules, to have sought additional review in the Hawaii Supreme Court; such ten-day delay permits the appellate process to withhold judg-

ment until a second in effect rehearing is considered under the unique Hawaii appellate structure.

The independent issue of a "mandate" to the lower court should not be confused with the requirement under Hawaii law that the local court must file the judgment before it is considered entered, as the local rules also provide for a subsequent "mandate" to the lower court in the form of a [Page Two] "notice of entry of judgment" which was also done thereafter, which is addressed as a mandate to the lower court.

As you know, the judgment of the Intermediate Court was entered promptly on May 19, 1987, based upon the draft submitted to it by counsel as required for settling the judgment.

Applying the clear language of the Court in the *Schofield* and *Marquette* decisions cited in my prior letter, and also the clear language of the second sentence of your Rule 20.4 which, contrary to the first sentence of your Rule 20.4, refers to "entry of judgment" after rehearing and not to its "rendering", had there been, paradoxically, no further request made to the Hawaii Supreme Court for review, I assume that your office under those clear precedents would have permitted the filing of our Petition mailed to you on August 17, 1987, as on time to be consistent with the language of your rules, our appellate rule 36, and your Court's published opinions.

My further re-reading of Mr. Lorson's letter to me of August 21, 1987, suggests that the denial by the Hawaii Supreme Court on May 8, 1987, is the single operative factor in your judgment refusing filing.

While I can well understand your thinking, applying the traditional model of an intermediate court and a higher state court, such as with your circuit courts and the Supreme Court, suggesting that the intermediate court made its decision which must then be considered the judgment in order to permit an application for a writ of certiorari to be then filed therein, with any denial then affirming the intermediate judgment and whatever is then entered being only a mandate to the lower court, that model is *not* the reality in our State of Hawaii.

As I have explained in my prior letter, our Intermediate Court is not really a separate court at all but is a part of our Supreme Court structure and process, as depicted on the official diagram enclosed in my earlier letter to you.

The following are the key distinctions explaining why the short ten-day procedure to seek review in the Hawaii Supreme Court *before* a judgment is entered in the Intermediate Court is unique to our State and does not yield to the traditional analysis applied to our facts by your office:

[Page Three] 1. Our appeal was not originally or ever filed in the Intermediate Court. Pursuant to Hawaii appellate rules, *all* appeals must be filed in the Hawaii Supreme Court which then decides whether it will hear the case or it will initially be heard by the Intermediate Court.

2. The case number assigned to the appeal by the clerk of the Hawaii Supreme Court is the same number that is used for all purposes in both the Intermediate Court and the Hawaii Supreme Court thereafter, notwithstanding the typographical error in the numbering found at the conclusion of Mr. Lorson's August 21st letter to me, no matter

which court or courts may subsequently review the case for consideration or decision.

3. The Intermediate Court has no separate filing procedure or filing office; all documents in the appeal process are filed at the office of the clerk of the Hawaii Supreme Court even if and after the case is assigned out to the Intermediate Court.

4. The procedure for seeking a review within the Hawaii Supreme Court of any Intermediate Court decision before judgment is entered by the Intermediate Court is a *reconsideration* process within the court to which the appeal was first filed (the Hawaii Supreme Court), notwithstanding its "writ of certiorari" nomenclature; your refusal to accept the nomenclature of "entry of judgment" at face value despite its presence in Congressional statutes as in Section 2101(c) should at least suggest a like approach to the "writ of certiorari" verbiage if equal standards are important; the time period is the traditional reconsiderational ten days, and if review is granted by the Hawaii Supreme Court it makes its decision on the existing appellate record and the existing briefs that were submitted to the Intermediate Court.

5. No oral argument as a rule is even granted in such reconsiderational situations by the Hawaii Supreme Court. No new briefs are filed with the Hawaii Supreme Court, which merely reconsiders the appellate materials that were before the Intermediate Court even if it does rehear the case.

6. The clerk's office withholds the entry of any judgment until the "rehearing" by the Hawaii Supreme Court is determined and is announced. There is no judgment of

the Intermediate Court entered, intentionally under rule 36, even though the case is forwarded to the Hawaii Supreme Court for inspection.

[Page Four] 7. This is a very small State in size and in pattern of population distribution as you may know. The judges of the Intermediate Court and the Hawaii Supreme Court work within a few hundred feet of one another. The clerk's offices of the two are effectively combined, with the clerks of each often stamping in the documents of the other. The major trial courts of the State in volume and size are within two blocks of the appellate courts. No elaborate procedures for formalizing the interrelatedness of the various courts over Mainland distances are necessary, which allows the Hawaii Supreme Court with its intermediate arm to itself "rehear" any intermediate decisions it wants to before judgment is permitted to be entered by our appellate rule 36. That seems like an intelligent procedure for us, without ever having been intended surely to trigger an adverse Rule 20 filing refusal by your office of our Petition through your application of a model of the appellate process that is *not* ours.

When I calendared in good faith the filing of our Petition for August 17, 1987, within ninety days of the actual entry of judgment by the Intermediate Court, due to the residency of my individual clients being Hong Kong and the trustees of my corporate client also being outside the United States and not readily available for joint decision making, I did so with a clear understanding that the judgment from which we seek your Court's review was entered as a matter of State law on May 19, 1987, by law *after* the denial of review by the Hawaii Supreme Court in our *single* state appeal known as Case No. 11353.

The filing of our Petition means a great deal to my clients and to me, and be believe to the vitality of the Fourteenth Amendment in our circumstances.

I would appreciate an immediate personal appointment with you and/or members of your office staff to solicit your reconsideration, and the opportunity if unsuccessful to apply to the Court directly for relief.

Since any further delay will be highly prejudicial, I hope that your office will communicate with me by telephone or fax so that I can make all necessary plans to be in Washington, D.C., within a few days.

[Page Five] Given the plain language of Section 2101(c), the clear precedents in your Court's prior decisions cited, the unique nature of the Hawaii appellate process, the ambiguity of your rules, and the obvious violations of the Fourteenth Amendment as explained within the body of our Petition, since we filed same within ninety days of what our State denotes as its entry of judgment, any extended consideration given to this request for reconsideration will be greatly appreciated.

I await word from you.

Very truly yours,

/s/ Gary Victor Dubin

GVD/o

cc: Michael W. Gibson, Esq.
Wesley Ichida, Esq.
Walter Beh II, Esq.
Francis J. Lorson, Esq.

GARY VICTOR DUBIN
Attorney at Law
Suite 1915
Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813

(808) 537-2300

September 8, 1987

Express Mail

The Honorable Joseph F. Spaniol, Jr.
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

RE: Leon D. Richardson, et al. vs. Howard T. Lane, et al., Petition For Writ of Certiorari, Submitted August 17, 1987

Dear Mr. Spaniol:

After sending you, yesterday, my letter of September 7, 1987, in further support of my request for reconsideration of your denial of the filing of our Petition, I have found a decision of the Hawaii Supreme Court explaining our local practice which I wish to call to your attention, which I believe clearly makes a reversal of your refusal mandatory.

Again, attempting to place this matter in proper perspective, the starting point for any analysis must be Section 2101(c) of Title 28 which starts the running of the ninety days from "the entry of judgment".

Apparently, the time-period problem began because various courts, including your district and your circuit

courts, permitted their clerks to "enter" notations of judgments in the record of the cases at various stages of the proceedings and based upon their own differing practices. Your appellate federal rule, Rule 36, for instance, fostered that ambiguity, which of course made your administration of Section 2101(c) understandably difficult.

In an effort it seems to standardize the practice and avoid having Petitions come in ninety days after some clerk made some notation in the record that might later be cited as an "entry of judgment", your Court through Rule 20 has sought to distinguish between the time that the judgment became effective and the time that the clerk of that court [Page Two] might make a "notation" in the record which had merely what you now term the "mandate effect", serving notice to the lower court of the judgment taken above.

That distinction begins your Rule 20.4, although with respect to a judgment upon rehearing (our situation) your Rule 20.4 still speaks in terms of an entry of judgment.

Surely, however, by drawing that distinction you do not intend to *change* state law and make a decision of a state court an "entry of judgment" with all the finality and effect that that might bring with respect to private rights within that state; it is assumed that your Rule is operating only with respect to the ambiguities.

For example, in "theoretically" the clearest of cases, is your office prepared to interpret Section 2101(c) to consider a state court "decision" an "entry of judgment" where that state specifically has ruled that it is not?

Consider our situation in Hawaii. Our civil rule 58 and our appellate rule 36 differ from the federal rules

even though we borrowed the bulk of those rules from the federal system. With respect to what is "the entry of judgment", Hawaii refused to adopt the federal ambiguity and instead specified that in both rule situations the entry of judgment is and only is "the filing of the judgment" by the clerk.

In Hawaii, we have *no ambiguity* as to "entry of judgment" and your office need not elect for us; there is *no* entry of judgment until the judgment *is filed*. Period. That is the choice of our Legislature and of our Supreme Court. Before the filing of the judgment in Hawaii, there is *no* action by a court of this state which in legal effect constitutes a judgment; as you know, without an adverse judgment there is nothing to appeal and any appeal would be and is ruled in those circumstances premature.

The Hawaii Supreme Court confronted this very question in 1961 in *Marn v. Reynolds*, 44 Haw. 655, 657-658. In *Marn*, the appellant tried to argue under the entry-of-judgment language of Rule 58 (identical to Appellate Rule 36) that a docket entry of the clerk made after the judgment was filed was "the *entry* of judgment" from which the time period began. The Hawaii Supreme Court rejected that argument (along the line of reasoning somewhat similar to your "mandate effect") and definitively ruled that in Hawaii there is *no effective* [Page Three] *judgment* until such time as one is *filed* and that it is only at that point and that point only that the time period begins to run:

> Such contention . . . is without merit, for Rule 58 of the Hawaii Rules of Civil Procedure, unlike the Federal Rules in this respect [identically to appellate

> rule 36 in both jurisdictions as well], provides *in haec verba:* "The filing of the judgment in the office of the clerk constitutes the entry of judgment; * * *." The language is crystal-clear. . . . Pointing, nevertheless, to the existing variance between the Hawaii Rules and the Federal Rules as to what constitutes "entry of judgment," counsel insists that this court "act now to amend Rule 58 by judicial decision." Suffice it to say that we will not ignore the clear language of Rule 58 . . . . This court recognizes that the Hawaii Rules of Civil Procedure were patterned after the Federal Rules. Certain changes, however, were advisedly made to harmonize with local practice of long standing. One of them was to define "entry of judgment" in the language above quoted.

Is it the intention of your office to override the decision of our Legislature and our State Supreme Court as to when our judgments are entered and effective? While obviously any interpretation of Section 2101(c) is a federal question, the issue as to when Hawaii judgments of trial courts and appellate courts are final is not a federal question; it is one that has already been answered by the sovereign powers within our State.

With respect to the question of the timing-relationship between a denial of review in our State Supreme Court of an Intermediate Court decision and the filing of the judgment of the Intermediate Court thereafter, that is also a question of State law which I have explained in my letter to you of September 7, 1987—that is also a *unique* Hawaii practice that differs completely from the multi-layered traditional court system model you are applying to us.

[Page Four] The *only* judgment in our case filed on appeal was filed on May 19, 1987.

We filed our Petition (by mail) on August 17, 1987, within ninety days of the entry of judgment under Hawaii law, which was the filing of the judgment and *not* the mandate under Hawaii law which came thereafter.

Surely, if there are any genuine issues as to the timeliness of our Petition in these circumstances, which we dispute with good cause, they should be decided by your Court and not by your office.

We respectfully request that you reconsider and accept for docketing as of August 17, 1987, our Petition and our Appendix thereto.

Very truly yours,

/s/ Gary Dubin
Gary Victor Dubin

GVD/o

cc: Michael W. Gibson, Esq.
Wesley Ichida, Esq.
Walter Beh II, Esq.
Francis J. Lorson, Esq.

GARY VICTOR DUBIN
Attorney at Law

Suite 1915
Grosvenor Center
733 Bishop Street
HONOLULU, HAWAII 96813

---

(808) 537-2300
September 8, 1987

Express Mail

The Honorable Joseph F. Spaniol, Jr.
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

RE: Leon D. Richardson, et al. vs. Howard T. Lane, et al., Petition For Writ of Certiorari, Submitted August 17, 1987

Dear Mr. Spaniol:

Earlier today I wrote to you to call your attention to the decision of the Hawaii Supreme Court in *Marn v. Reynolds*, 44 Haw. 655, 657-658 (1961), which held that no judgments in Hawaii pursuant to our State's laws are effective and start the appeal clock until they are *filed* and that that constitutes "entry of judgment", not their rendering and not their notation on the docket sheet and not any subsequent notice or mandate procedure—as a matter of state law, that issue not being a federal question.

One might therefore perhaps ask: What is the status of an announced appellate opinion or order in the State of Hawaii *before* the filing of the judgment? That question is paramount since your office started the appeal clock on us *before* there was a filed judgment in our case.

The answer to this question is that *before* the filing of the judgment on appeal (which in our case occurred on May 19, 1987) there is *no* operative conclusion to the pending appeal as a matter of state law.

One need only consult the appellate record initially of our specific case for proof of this fact:

In 1985 we filed our first appeal, which the Hawaii Supreme Court assigned to the Intermediate Court. The trial judge had inadvertently neglected to formally dismiss cross-claims between the victorious defendants although he had [Page Two] done so orally when his opinion was rendered in open court in January 1985.

In late 1985, the Intermediate Court dismissed the first appeal on the grounds that the judgments of the lower court appealed from were not final, in its Memorandum Opinion entered on December 31, 1985; it refused to reconsider its decision and issued an order denying reconsideration entered January 17, 1986.

The defendants then dismissed their cross-claims formally, as they were also interested in resolving the appellate issues, and we filed new notices of appeal; when the case to our knowledge was to be redocketed for the second appeal in the Hawaii Supreme Court, its Chief Clerk informed us that the first appeal was still pending since the (first) judgment on appeal had never been submitted by the defendants-appellees in draft form and was therefore never filed and that, in order not to have to go through the notice-of-appeal process again, all counsel consented to the entry of a judgment on appeal *nunc pro tunc*, effective January 17, 1986 (the date provided by the Chief Clerk, which was then accomplished).

In order to make the judgment on appeal retroactive, the consenting signatures of all counsel were required, an unusual procedure for the entry of judgments on appeal in Hawaii.

The papers documenting this incident are enclosed.

Thus, one can see that without a *filed* judgment on appeal there is no operative decision on appeal in Hawaii. How then can you begin the appeal clock *beforehand* with respect to the ninety-day period from the entry of judgment when under state law the appeal was not determined until May 19, 1987? And Section 2101(c) requires "entry of judgment".

Neither should your office be further confused by the in-house reconsiderational process utilized uniquely by the Hawaii Supreme Court to review I.C.A. opinions on cases filed in the Hawaii Supreme Court which that Court has assigned to the I.C.A. for hearing, as explained in my prior letters, before as here any operative judgment was reached and made by *filing*.

Had the Hawaii Supreme Court decided to "rehear" our case, notwithstanding the "writ of certiorari" nomenclature, it would have done so in the style of any rehearing generally, in that *same* appellate case with the *same* case number even, [Page Three] *without* new briefs, *without* new oral argument, and *without* any additional record other than upon the Intermediate Court appellate record made before such "rehearing".

I hope that this further information, if anything further is needed, will persuade you to permit our appeal to be filed on August 17, 1987, *nunc pro tunc*, so that it can be decided by your Court on its merits.

I look forward to hearing from you as quickly as possible. I am prepared to provide you immediately with whatever additional authenticated materials you may re-

quire, and I would very much appreciate a personal meeting with you and/or your staff in Washington, D.C., as to these matters, as quickly as such arrangements can be made.

Alternatively, I would like to move the Court for an order permitting the filing or for an appropriate extension in which to do so.

Very truly yours,

/s/ Gary Dubin
Gary Victor Dubin

GVD/o
enclosures

cc: Michael W. Gibson, Esq.
Wesley Ichida, Esq.
Walter Beh II, Esq.
Francis J. Lorson, Esq.
(w/enclosures)

ASHFORD & WRISTON
Attorneys at Law
P.O. Box 131
Honolulu, Hawaii 96810

July 1, 1986

HAND-DELIVERY
Mr. Samuel Makekau
Chief Clerk, Supreme Court
State of Hawaii
Judiciary Building
Honolulu, Hawaii 96813

RE: Case No. 10487, Leon D. Richardson, et al., Plaintiffs-Appellants v. Howard T. Lane, et al., Defendants-Appellees

Dear Mr. Makekau:

Enclosed please find the Judgment on Appeal and the Notice of Entry of Judgment on Appeal and Certificate of Service which we are resubmitting in the above-captioned case. The parties have reviewed the forms and have indicated that they have no objection to the *nunc pro tunc* effect of the Judgment.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned at your convenience.

Very truly yours,

ASHFORD & WRISTON

By /s/ Lorrin B. Hirano

LBH:mb
Enclosure

cc: Gary V. Dubin, Esq.
Cathy A. Lee, Esq.
Cheryl Nakamura, Esq.

4325s

NO. 10487

IN THE INTERMEDIATE COURT OF APPEALS
STATE OF HAWAII

OCTOBER TERM 1985

LEON D. RICHARDSON and MARGIE J. RICHARDSON, husband and wife, and COPTHORNE N.V., a a Netherland Antilles corporation,	) CIVIL NO. 70332)) (Filed July 8, 1986))) APPEAL FROM THE:
Plaintiffs-Appellants,	) 1) ORDER GRANTING) IN PART AND DENYING) IN PART, DEFEN-) DANT'S MOTION TO) DISMISS AND FOR
v.	) SANCTIONS FILED) JANUARY 28, 1985,
HOWARD T. LANE, WILLIS SINSABAUGH, WATERFRONT PROPERTIES, INC, a Hawaii corporation, JOHN DOES 1-10, DOE PARTNERSHIPS 11-20, DOE CORPORATIONS 21-30, and DO ENTITIES 31-40,	) 2) ORDER DISMISSING) COMPLAINT FILED) JANUARY 25, 1985,) 3) JUDGMENT FILED) JANUARY 24, 1985,) 4) JUDGMENT FILED) JANUARY 24, 1985,) 5) FINDS OF FACT) AND CONCLUSIONS) OF LAW FILED) JANUARY 24, 1985,
Defendants-Appellees,	) 6) ORDER GRANTING) MOTION FOR ORDER
and	) TO DEPOSIT PAY-) MENTS INTO THE
THE FIDELITY STANDARD LIFE INSURANCE COMPANY,	) COURT FILED) JANUARY 14, 1985,) 7) ORDER MODIFYING
Intervenor/ Defendant.	) AND AMENDING) ORDER TO DEPOSIT) PAYMENT INTO THE
----------	) COURT FILED

JANUARY 28, 1985,
8) ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM ORDER DISMISSING COMPLAINT AND FROM JUDGMENT FOR DEFENDANTS, FOR NEW TRIAL, AND FOR STAY OF JUDGMENT FILED FEBRUARY 26, 1985,
9) ORDER GRANTING DEFENDANT HOWARD T. LANE'S MOTION FOR AWARD OF ATTORNEY'S FEES FILED MARCH 6, 1985,
10) ORDER GRANTING DEFENDANTS WILLIS SINSABAUGH AND WATERFRONT PROPERTIES, INC.'S MOTION FOR COSTS AND ATTORNEY'S FEES FILED MARCH 19, 1985,
11) ORDER DENYING PLAINTIFFS' MOTION FOR ORDER VACATING AND SETTING ASIDE DEFAULT JUDGMENT, ORDER DISMISSING COMPLAINT, AND EXPERT WITNESS PRECLUSION ORDER FILED MARCH 19, 1985 and 12) RULING

REFUSING TO DISQUALIFY JUDGE EDWIN Y. SASAKI PURSUANT TO SECTION 601-7(b) AFFIDAVIT, FROM ALL PROCEEDINGS HEREIN, DECIDED JANUARY 21, 1985, BY JUDGE SASAKI

FIRST CIRCUIT COURT

HONORABLE EDWIN Y. SASAKI Judge

HONORABLE PHILIP T. CHUN Judge

JUDGMENT ON APPEAL

Of Counsel:

ASHFORD & WRISTON

MICHAEL W. GIBSON
LORRIN B. HIRANO
235 Queen Street
P. O. Box 131
Honolulu, Hawaii 96810
Tel. No. 524-4787

Attorneys for Defendants- Appellees
Howard T. Lane, Willis Sinsabaugh
and Waterfront Properties, Inc.

4112s

NO. 10487

IN THE INTERMEDIATE COURT OF APPEALS
STATE OF HAWAII

OCTOBER TERM 1985

LEON D. RICHARDSON and MARGIE J. RICHARDSON, husband and wife, and COPTHORNE N.V., a Netherland Antilees corporation,	CIVIL NO. 70332
Plaintiffs-Appellants, v.	JUDGMENT ON APPEAL
HOWARD T. LANE, WILLIS SINSABAUGH, WATERFRONT PROPERTIES, INC., a Hawaii corporation, JOHN DOES 1-10, DOE PARTNERSHIPS 11-20, DOE CORPORATIONS 21-30, and DOE ENTITIES 31-40,	
Defendants-Appellees,	
and	
THE FIDELITY STANDARD LIFE INSURANCE COMPANY,	
Intervenor/ Defendant.	

JUDGMENT ON APPEAL

Pursuant to the Memorandum Opinion of the Intermediate Court of Appeals entered herein on December 31, 1985, and the Order Denying January 10, 1986 Motion

for Reconsideration entered herein on January 17, 1986, the Appeal is dismissed for lack of appellate jurisdiction.

This Judgment shall be effective as of January 17, 1986.

DATED: Honolulu, Hawaii; July 8, 1986.

BY THE COURT:

/s/ Darrell M. Phillips
Of Clerk

APPROVED:

/s/ James S. Burns
Chief Judge

NO OBJECTION:

/s/ Gary Victor Dubin
Attorney for Plaintiffs

/s/ Cathy A. Lee
Attorney for Defendants
Willis Sinsabaugh and Waterfront
Properties, Inc.

/s/ Cheryl Nakamura
Attorney for Intervenor-Defendant
The Fidelity Standard Life Insurance
Company

4112s

NO. 10487

IN THE INTERMEDIATE COURT OF APPEALS
STATE OF HAWAII

OCTOBER TERM 1985

LEON D. RICHARDSON and MARGIE J. RICHARDSON, husband and wife, and COPTHORNE N.V., a Netherland Antilles corporation,	CIVIL NO. 70332
	(Filed July 8, 1986)
Plaintiffs-Appellants,	APPEAL FROM THE: 1) ORDER GRANTING IN PART AND DENYING IN PART, DEFENDANT'S MOTION TO DISMISS AND FOR SANCTIONS FILED JANUARY 28, 1985, 2) ORDER DISMISSING COMPLAINT FILED JANUARY 25, 1985, 3) JUDGMENT FILED JANUARY 24, 1985 4) JUDGMENT FILED JANUARY 24, 1985 5) FINDS OF FACT AND CONCLUSIONS OF LAW FILED JANUARY 24, 1985 6) ORDER GRANTING MOTION FOR ORDER TO DEPOSIT PAYMENTS INTO THE COURT FILED JANUARY 14, 1985 7) ORDER MODIFYING AND AMENDING ORDER TO DEPOSIT PAYMENT INTO THE COURT FILED JANUARY 28, 1985,
v.	
HOWARD T. LANE WILLIS SINSABAUGH, WATERFRONT PROPERTIES, INC., a Hawaii corporation, JOHN DOES 1-10, DOE PARTNERSHIPS 11-20, DOE CORPORATIONS 21-30, and DOE ENTITIES 31-40,	
Defendants-Appellees,	
and	
THE FIDELITY STANDARD LIFE INSURANCE COMPANY,	
Intervenor/ Defendant.	

8) ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM ORDER DISMISSING COMPLAINT AND FROM JUDGMENT FOR DEFENDANTS, FOR NEW TRIAL, AND FOR STAY OF JUDGMENT FILED FEBRUARY 26, 1985,
9) ORDER GRANTING DEFENDANT HOWARD T. LANE'S MOTION FOR AWARD OF ATTORNEY'S FEES FILED MARCH 6, 1985,
10) ORDER GRANTING DEFENDANTS WILLIS SINSABAUGH AND WATERFRONT PROPERTIES, INC.'S MOTION FOR COSTS AND ATTORNEY'S FEES FILED MARCH 19, 1985,
11) ORDER DENYING PLAINTIFFS' MOTION FOR ORDER VACATING AND SETTING ASIDE DEFAULT JUDGMENT, ORDER DISMISSING COMPLAINT AND EXPERT WITNESS PRECLUSION ORDER FILED MARCH 19, 1985 and
12) RULING REFUSING TO DISQUALIFY JUDGE EDWIN Y. SASAKI PURSUANT TO SECTION 601-7(b) AFFIDAVIT, FROM ALL PROCEED-

INGS HEREIN, DECIDED JANUARY 21, 1985, BY JUDGE SASAKI

FIRST CIRCUIT COURT

HONORABLE EDWIN Y. SASAKI Judge

HONORABLE PHILIP T. CHUN Judge

NOTICE OF ENTRY OF JUDGMENT ON APPEAL

CERTIFICATE OF SERVICE

Of Counsel:

ASHFORD & WRISTON

MICHAEL W. GIBSON
LORRIN B. HIRANO
235 Queen Street
P. O. Box 131
Honolulu, Hawaii 96810
Tel. No. 524-4787

Attorneys for Defendants-Appellees
Howard T. Lane, Willis Sinsabaugh
and Waterfront Properties, Inc.

4112s

NO. 10487

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

OCTOBER TERM 1985

LEON D. RICHARDSON and MARGIE J. RICHARDSON, husband and wife, and COPTHORNE N.V., a Netherland Antilees corporation,	CIVIL NO. 70332
Plaintiffs-Appellants,	NOTICE OF ENTRY OF JUDGMENT ON APPEAL AND CERTIFICATE OF SERVICE
v.	
HOWARD T. LANE, WILLIS SINSABAUGH, WATERFRONT PROPERTIES, INC., a Hawaii corporation, JOHN DOES 1-10, DOE PARTNERSHIPS 11-20, DOE CORPORATIONS 21-30, and DOE ENTITIES 31-40,	
Defendants-Appellees,	
and	
THE FIDELITY STANDARD LIFE INSURANCE COMPANY, Intervenor/ Defendant.	

NOTICE OF ENTRY OF JUDGMENT ON APPEAL

TO: THE HONORABLE PRESIDING JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII;

PLEASE TAKE NOTICE that the Intermediate Court of Appeals has entered the following Judgment on Appeal:

> Pursuant to the Memorandum Opinion of the Intermediate Court of Appeals entered herein on December 31, 1985, and the Order Denying January 10, 1986 Motion for Reconsideration entered herein on January 17, 1986, the Appeal is dismissed for lack of appellate jurisdiction. This Judgment shall be effective as of January 17, 1986.
>
> DATED: Honolulu, Hawaii; July 8, 1986.
>
> BY THE COURT:
>
> /s/ Darrell M. Phillips
> Of Clerk

The form of the foregoing notice is approved and IT IS ORDERED that the same issue forthwith.

DATED: Honolulu, Hawaii; July 8, 1986.

/s/ James S. Burns
Chief Judge

NO OBJECTION:

/s/ Gary Victor Dubin
Attorney for Plaintiffs

/s/ Cathy A. Lee
Attorney for Defendants
Willis Sinsabaugh and Waterfront
Properties, Inc.

/s/ Cheryl Nakamura
Attorney for Intervenor-Defendant
The Fidelity Standard Life Insurance
Company

4112s

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was duly served by hand delivery on the following persons at their respective addresses shown below.

GARY VICTOR DUBIN, ESQ.
345 Queen Street, Suite 800
Honolulu, Hawaii 96813
Attorney for Plaintiff-Appellants

CATHY A. LEE
Suite 2500
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813
Attorneys for Defendant-Appellees
Willis Sinsabaugh and
Waterfront Properties, Inc.

DATED: Honolulu, Hawaii; July 7, 1986.

/s/ Lorrin B. Hirano

4112s